

Court of Appeals, State of Michigan

ORDER

Kristy Gadowski v James Ferrell

Docket No. 258174

LC No. 03-329598-NF

Kirsten Frank Kelly
Presiding Judge

Kurtis T. Wilder

Christopher M. Murray
Judges

The Court orders, pursuant to MCR 7.205(D)(2), that the circuit court's September 9, 2004 order denying defendants' motion for summary disposition is REVERSED. This Court reviews the trial court's ruling on a motion for summary disposition de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Because there was no factual dispute regarding the nature and extent of plaintiff's injuries, whether she suffered a serious impairment of body function is a question of law for the court. MCL 500.3135(2)(a). The parties apparently do not dispute that plaintiff's injuries impaired an important body function. *Kreiner v Fischer*, 471 Mich 109, 132; 683 NW2d 611 (2004). Plaintiff's injuries were objectively manifested by abnormal MRI and EMG test results. *Kreiner v Fischer (On Remand)*, 256 Mich App 680, 685; 651 NW2d 95 (2003), rev'd on other grounds 471 Mich 109 (2004). However, reasonable minds could not differ in concluding that the impairment did not affect plaintiff's general ability to lead her normal life. Plaintiff wore a cervical collar for the three weeks she was off work and then returned to work full-time. She went to physical therapy ten times and received no further treatment apart from prescriptions for pain medication. The only significant impact on plaintiff's life was her inability to participate in sports and other recreational activities. These restrictions, which were self-imposed rather than physician-recommended, do not establish residual impairment. *Kreiner, supra*, 471 Mich at 133 n 17. Therefore, the trial court erred in denying defendants' motion for summary disposition.

This matter is REMANDED to the circuit court for further proceedings consistent with this order. We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 16 2005

Date

Sandra Schultz Mengel
Chief Clerk